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Supreme Court, U.S.
FILED

No. 10-183

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In The
Supreme Court of the United States

FRED SAMSON ,
Petitioner

V.

JAMES MANLEY AND DON JACKSON

Respondents

On Petition For A Write of Certiorari
To The Supreme Court of Texas
Recall or Stayed Mandate

PETITION FOR A WRITE OF CERTIORARI

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QUESTIONS PRESENETED

The following question are presented by the petitioner

1. Does an American citizen have a Constitutional Rights to Due Process Clause .

2. Does an American citizen whose First and Fifth Amendment right to due process of law and , equal protection of the law and/ or access to the trial by jury have been deprived by intentional refusal of Article III.

PARTIES TO THE PROCEDING

Pursuant to Rule 14 .1(b) , the parties here and in the proceeding in the U.S. Court of Appeals for the Supreme Court of Texas .

Petitioner here and appellant below is Fred Samson individual pro sc.

Respondent here and appellee is Don Jackson professional person with authority , to protect best interest of public

Respondent here and appellee is James Manley pro sc , profesional person with authority to protect and serve public .

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APPENDIX AB

PETITION FOR WRITE OF CERTIRARI

Fred Samson , on behalf of himself , herby petitions for a write of certiorari to review the judgment of the United States Court of Appeals . There was no good-faith determination of the law in petitioner's severance cause in either the state district court or in the Fourteenth Court of Appeals in Houston , Supreme Court of Texas also denied petition for review and Motion for rehearing was denied on May 7, 2010.

OPINIONS BELOW

The unreported Court of Appeals' Opinion affirming the judgment of the state district court, entered 2 October , 2009 , is reproduced at Pet.App.1. The District Court final judgment of October, 2, 2007 is reproduced at Pet. App. 13 . Supreme Court opine is reproduced at Pet. App. 20.Mandate is reproduced at Pet. App. 4 , Motion to denied stayed mandate is reproduced Pet. App.

JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C. § 11254(1) , this Court has jurisdiction to review the decision at the Court of Appeals for the Fourteenth Court of Appeals in this matter. Petitioner timely filed a petition for review in the Supreme Court of Texas , which was denied on February 19, 201; Motion for rehearing was denied on May, 7, 2010. This petition is consider as timely when mail on or before August 5, 2010.

CONSTITUTIONAL PROVISION INVOLVED

This case involves the First , Fifth , Seven and Fourteenth Amendments to the Unites States Constitution.

U.S. Const. amend. XIV, § 1: All person born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside . No States shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States ; nor shall any States deprive any person of life ,liberty , or property , without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws .

The First Amended , U.S. Constitution, provides : Congress shall make no law respecting an establishment of religion , or prohibits the free exercise therefore; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble , and to petition No act of Congress can authorize a violation of the Constitution *United States v. Brignoni-Ponce* , 95 S.Ct .2574, 2578 (1975). The Constitution cannot be interpreted safely except by reference to common law and to British institutions as they were when the instrument was framed and adopted Article III, Section 1, of the United States Constitution provides in relevant part: "The judicial Power of the United

States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time .....

Article III , Section 2, of the Unites States Constitution provides in relevant part ; " The Judicial Power shall extend to all Cases , in Law and Equity, arising under this Constitutions, the Laws of the United States , and the Treaties made or which shall be made , under their Authority ....."

The First Amended to the United States Constitution provides in relevant part." Congress shall make no law .....abridging the freedom of speech.....or the right of the people peaceably to assemble , and to petition the Government for a redress of grievances .

The Fifth Amendment to the United States Constitution provides in relevant part :" nor shall any person be....deprive of life , liberty , or property , without due process of law....."

Section 1 of the Fourteenth Amendment to the United States Constitution provides: " All person born or naturalized in the United States and subject to the jurisdiction thereof , re citizen of the United States and of the State wherein they reside . No State and shall make or enforce any Law which shall abridge the privileges or immunities of citizen of the United States ; not shall any State deprive any person of life, liberty , or property, without due process of law; nor deny to any person within its

jurisdiction the equally protection of the law in Criminal or Civil law , the right to trial by jury " is no mere procedural formality , but a fundamental reservation of power in our constitutional structure

Where it is not remedy , there is no rights . Where the District Court of Harris County and Fourteenth Court of Appeals deny petitioner's remedies they denied his rights . Petitioner's remedy is accesses to jury to present his evidence of violation of his Constitutional , Human Rights and violations of federal statues against him by the respondents .Courts cannot judicially rewrite the statues .*In re Espy* ,80 F.3d 501, 505 (D.C. Cir.1996) quoting *Aptheker v. Secretary of State* , 84 S.Ct. 1659, 1668(1964) .

Waiver of the Right - Parties may enter into a stipulation waiving a jury and submitting the case to the court upon an agreed statement of facts , even any legislation provision for waiver. *Campbell v. Bayreou* , 62 U.S. 223 (1859) .If parties made timely request and made payment for trial by jury in writing , they perverse their right for the jury trial . Te term " common law " was used in conntradictions to the suits in which equitable rights alone were recognized at the time of the framing of the Amendment and equitable remedies were administered *Parson v. Bedford* , 28 U.S. (3 pet.) 443 , 447 (1983

FEDERAL AND STATE STATUES INVLOVED

18. U.S.C. 242 states , in pertinent part :

> Whoever, under color of any law , statue ordinance , regulation , or custom , willfully subject any person in any State , territory, Commonwealth , Possession , or District to the deprivation of any rights , privileges , or immunities secured or protected by the Constitution or law of the United States,..... shall be fined under this title or imprisoned not more than one year , or both .....

42 U.S. C. 1983 states , in pertained part:

> Every person who, under of any statues
>
> ordinance , regulation , custom , or usage , of any State or Territory or the District of Columbia , subject , or causes to be subjected , any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right , privileged , or Immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law , suit in equity , or other proper proceeding for redress.....

STATEMENT OF THE CASE

A. Factual Background

On or about September 17, 2005 , Petitioner Fred Samson a Texas resident , filed an action in state district court challenging Highland Insurance Company regarding its obligations trough petitioner medical service and medicine, related to his job injuries . During legal process Petitioner discovery that first transition from 1988 was whole created by fraud committed by respondents, and other party of interest .

B. Facts that star second law suite .

June 2003 , petitioner received latter from " Genex" company, that he has schedule appointment to the Dr. Brownhill office on 6 day of November, 2003. Memo inform that appointment is a mandatory if " a petitioner will be not able to attend , then he will pay 500 hounded dollars fees as a penalties . .[Samson] went , to Dr. Brownhill office on November, 6, 2003, but with out any of his medical record. He only bring all the medication with him that day. "Genex " company acted on request of Highlands Insurance Company adjustor . The whole approached was validation of Petitioner Firth Amended of U.S. Constitutional Right

Petitioner was on medical disabilities since his job injury on/or about 21 day of August, 1984 and after his back surgery on /or about May 23 1985 he not able to perform his job duty . Dr. Hood's opine form 2000, support Samson disabilities , additionally new facts arise that Dr. DeBender contributes to [Samson] injuries .Dr. Brownhill opine sound on personal matter and prejudicial to fact , in his opine appeared statement as petitioner is -*obese* -and that base of very limited record [3] he is not able to made proper evaluation intimidate statement that " he do wanted work" was outrages one from November 2003 till June 2004 silent period .

On June 17 , 2004 , when [Samson} went to pick up his medication to pharmacy , the following day he learn that Highlands Insurance Company adjustor refuse to makes any future payments . [Samson] bought his medication very next day . Petitioner call to Linda Miller [Highlands] adjustor office , she told him to " get loss " . This was basis this claims against Highlands , then more defendants join the same this claim for damages .

[_____

[2] Samson did not know till 2007 , that Highlands Insurance Company request two evaluation before , one on 2000, and the other 2002 , both opine support [Samson] injuries .

[3] Dr. Brownhill was also custodian of [Samson] medical .record and that was his duty keep in order all medical evaluation test , x-rays . This fact was dissever 2007 during civil process.

Some fact had been discover support by evident , few documents had been destroyed by removed form the public . Trial Subpoena was quash, and whole claim terminate by summary judgment and still unresolved issues are present to this Court for review .

B. Process in Trial Court

During legal process from January 2006 petitioner reviewing his record in state court file and discover that he was defraud , and court was fraud buy respondents , they act in concert together comities crime against [Samson] legal right , and that First Judgment was not valid base of law . All transaction had been created on fraud .fraud and fraud upon the court , including release , that was a fabrication of the instrument . Base of all facts supported by evidence [Samson] is entitled for New Trial by jury on all issues .

Nevertheless , on November, 2, 2007 the state district court , without oral hearing signed Finally Judgment , regarding the court first intention to submitted cause for trial by jury . The states district court denied Samson's motion for New Trial and reopen evidence all relief had been denied [App .A 1].

The Appeal was filed in December 19, 2007 in Fourteenth court of Appeals against Manley and Jackson with other parties, that are not party in this petition .

The Court of Appeals affirmed the state court summary judgment ., unpublished that is unconstitutional. The Supreme Court of Texas denied Petition for Review on February 2010 and Motion for Rehearing was denied on May, 7, 2010. This Petition for Write Certiorari has resulted.

STATEMENT OF THE FACTS

Fourteenth Court of Appeals misstated all the facts intentionally .Nevertheless , the facts as stated in that court's opinion are incorrectly interpreted , a matter that still have been easy resolve by application of basics principle of fraudulent concealment . *Robertson v. Seidman & Siedman* , 609 F. 2d 583, 593(CA2 1979)

On the Fourteenth Court's of Appeal opine stated on page 2 [App. B] " before trial party reached a settlement agreement " it is incorrect and misapplied , because trial by jury was the issues on November 18, 1988 . Facts and events are intentionally twisted and mischaracterize it is no reason to present to this Court all of them .Instead oral argument will interpret correctly all facts .

Virginia law , specifically eschews a bright -line- test , judging each case on its facts, and considering the nature of the representation , the relative knowledge of the parties , their intentions, and all of the surrounding .

> " it is not always an easy matter to determine whether a given statement is one of fact or opine " *Tate v. Colony House Builder, Inc.*, 508 S.E. 2d 597 , 599 (Va 1999) . "

Fraudulent Concealment

Some Circuits have held that when a " plaintiff dose not, in fact , know of defendant unlawful activity , and when the defendant takes " affirmative steps" to conceal the unlawful activity , those circumstances are sufficient to toll the limitation period (or to " estop") the defendant from asserting a limitation defense) *Grimmett* 75 F.3d at 514 .After file law suite petitioner discover criminal activities and take necessary step to prevent affirmative continuing act of fraud . Under doctrine "fraudulent concealment " Court seeks to punish defendants for affirmative , direction act of concealment : the behavior of plaintiff is consequently irrelevant . See *Wolin v. Smith Barney Inc, 83 F.3d 846, 852 (CA7 1996)* It will be always argument spilt opine between the Circuits .

Class of civil cases exists across the of United States of America in which many Courts have engaged in systematic discrimination pro sc litigants , because they can not afford representation -effectively denied the access to the a trial by jury , through fraud , deceit , the fabrication of facts and irregular interpretation of law .

Our courts have a concomitant obligation to provide every person under their jurisdiction with equally protection of the law. As *John Adams* observed Justice *Moody* described the right at access to the courts as " the right conservative of all other rights" . Petitioner sought several types of relief , including an injunction and money damages , if legal and equitable claims are join , and court erroneously dismiss the legal claims and decides common issues in the equable action, the plaintiff can not be collaterally stopped from relitigating those common issues in a jury trial *Lytle* v. *Household Manufacturing , Inc.*, 494 U.S. 545 (1990)

For more than a century , courts have recognized reliance by the plaintiff to be necessary element of common -law fraud claim. " The essential constitutes of [an action for fraud and deceit by means of false pretense] are a false representation.. which came upon to the knowledge of the plaintiff and in reliance upon which , in good faith acted, and thus suffers the injury of which complaints.

In this case , the judiciary and the executive braches steadfastly block petitioner's access to his fellow citizen on the jury .

This Court gave example of class based discrimination , "'a tax on wearing yarmulkes is a tax on Jew " . That implies that Jews are a class of people and they are unique class is that wear yarmulkes . So to tax the wearing of yarmulkes would be tax that target against a specific class of people because the act is question targets unfairly a characteristic unique to those class member in violation of their constituently right to equal protection . This case is similar , litigant pro sc is member of special class., first and second procedure was unconstitutional . *Jane Bray v. Alexandria Wone's Health* 61 U.S. 4080 Because dishonesty of lower court application of the English language demonstrates that the right granted to American citizen in their Constitution are [in effect] merely licensed . Petitioner file many different type of Motion all had been denied . Leave to the court had been denied . All the prayers had
been bloke and all his rights had been denied

" The very essence of civil liberty certainly consists in the right of every individual to claim protection of

the law, whenever he receives an injury." *Marbury v. Madison* , 5 U.S. 137, 163 (1804).

"

if two or more persons in any State or Territory

Conspire or go in disguise on the highway or the premises of another , for the purpose of depraving , either directly or indirectly , any person or class of persons of the equally protection of the laws , or equal privileges or Immunities under the laws ; or for the purpose of preventing or hindering The Constitutional of any State or Territory the equal protection of the laws ..." *Kush et, al* v. *Rutledge* , 460 U.S. 723

Each case like each litigant , is unique and need to be resolve separately . This case is such one petitioner would like to present this case in such unique view . Any person with out legal training will find difficult challenge and defends his/.her legal right , however it is his right to do so.

It is well establish that the jury weights the evidence , assesses the credibility's of witness , and resolve conflicts and inconsistence . The Court is not factfinder, jury are . 391 U.S. 145 (1968) *Duncan v. Louisiana*

1. Does an American citizen has Constitutional Rights to Due Process Clause .

[Samson] petitioner suffers injuries does he has right to present his claim to jury ?

Our courts have obligation to provides every person under their jurisdiction with equally protection of the law . " As John Adams observed in the Massachusetts Declaration of Rights, " [i]t is essential to the preservation of the rights of every individual ,his life , liberty , property and character , that there be an impartial interpretation of the law , and administration of justice ." *Mass Declaration of Rights* , art. 29

Addressing for the first time issues of whether a party is entitled to jury for equitable claims, where the party has a right to a jury trial based on other legal claims, the U..S. Court of Appeals for the Federal Circuit reversed the district court, holding that when there are common factual issues underling The equitable and legal claims ,both claims should be tried to a jury . *Frank T Shum v. Intel Corp.., Light Logic Inc., and Jean-Marc Verdiell, Case* No.06-1249 (August 24, 2007) Only the *recipient* to fraudulent misrepresentation may recover under common-law fraud. Article III court. *Northern Pipeline Const. Co.*, v. *Marathon Pipe Line Co.*, 458 U.S. 50 63-76 (1982) [ArtIII] the Court has ruled that Congress

has not authorizes to withdraw
from [ART.III] judicial cognizance any matter which from its nature , is the subject of a suit at the common law or equity, or admiralty" , and every civil matter of action

REASONS TO GRANTING THE WRITE

" The right of trial by jury shall remains inviolate " Texas Constitution Art .I § 15 . "

" TEAR DOWN THE WALL " ACCESS OF INDIVIDUAL TO TRIAL BY JURY

Simply speech that made a difference when June 12, 1987 President Ronald Regan visit Germany to ended cold war between the Nations , at the Brandenburg Gate addressed to " Mr. Gorbachev , tear down the wall!"

> " we welcome changes and openness: for we belief that freedom and security go together , that the advance of human liberty can only strength the cause of world peace . There is one signed the Soviet can make that would be unmist-takable, that would dramatically the cause of freedom and peace .....
> If you seek peace ,if you seeks prosepe-rity for the Soviet Union and Easter Europe , if you seek liberalization , come

> here to this gate, Mr. Gorbachev , open this gate, Mr. Gorbachev , tear down this wall!"

Petitioner address to this Court or Congress to break the wall that prevent litigants of access for trial by jury in Texas and other states .

There are special and important reasons for granting the write in this case . The Honorable Court should grant certiorari because the decision in this case conflicts with clear holding of the Honorable Court *Frank T Shum v. Intel Corp.., Light Logic Inc., and Jean-Marc Verdiell, Case* No.06-1249 (August 24, 2007) .

The write must be granted because the Fourteenth Court of Appeals' decision conflicts with the original intent of Federal Rule of Civil and Criminal Procedure , this court's prior decision ,decisions of the other Circuit Courts of Appeals and their own precedent ." No producer principal is more familiar to this Court, than that a constitutional right." or right of any other sort, ,ay be fortified in criminal as well as civil cases by the failure to make timely assertion of the right before tribunal having jurisdiction to determine it....." *United States v. Olano* , 507 U.S. 725 , 731 (1993)

2. Does an American citizen whose First and Fifth Amendment right to due process of law

and , equal protection of the law and/ or access to the trial by jury have been deprived by intentional refusal of Article III.

As petitioner also demonstrate in criminal case *Linda R.S. v. Richard* D. 410 U.S. 614 (1973) was wrongly decided and must be corrected either by this Court or by Congress . The Seven Amended U.S. Constitution , this Court has treated as preserving right of trial by jury in civil cases as it " existed under the English common law when the amendment was adopted ."[5] Every citizen has constitutional right to be protected and the privileges or immunities shall not be taken away with out due process . Privileges that guaranteed by the Fourteenth Amendment ,should be restore . *Equally Employment Opportunity Commission v. Pacific Press Published Association* , 676 F. 2d 1272 (9 th cir.1982) Where it is not remedy , there is no rights . Where the District Court of Harris County and Fourteenth Court of Appeals deny petitioner's remedies they denied his rights . Petitioner's remedy is accesses to jury to present his evidence of violation of his Constitutional , Human Rights and violations of federal statues against him by the respondents . State district court which is a court with jury , and the amended does apply to this court . This Court in *Ross v. Bernhard* 6 ,held that right to a jury depends on the nature of the issues to be tired rather than the procedural framework in which it is raised

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[5] 5 Baltimore & Carolina Line v. Redman , 295 U.S. 654, 657(1913); Parson v. Bedford , 28 U.S. (3 Pet.) 433 48(1830).

When American citizens have Constitutional right to petition the federal grant jury to investigate crimes committed against them . This no conflict about citizens' rights to trial by jury or grand jury is guaranteed by Six , Seven and Fourteenth Amendment's Due Process Clause makes obligatory upon the states certain fundamental right . See *Gideon v. Wainwright*, 372 U.S. 335 , 342 (1963)

Oliver *Wendell Holmes* justice wrote that a " page of history is wroth a volume of logic ."[7] The U.S. Supreme Court has long hold that the proper inquiry in Seven Amendment case is a historical one : " Since Justice Story's day , we have existed understood that ' the right of trial by jury thus preserved is the right that exist under the English common law when the [Seventh] Amendment was adopted ." [8]

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6 396 U.S. 469(1970)

7 The stockholder ' derivative action is a creation of equity made necessary . . . of the 'corporation entity' or the "concept of separated personality" *The Shareholders ' Derivative Suite : Notes on Its Deprivation*, 32 N.Y.U.L. Rev. 980 (1957)

Many State Court have also expressed similar sentiments : The guarantee of trial by jury in civil cases " has been regarded from the earliest times as one of the safeguard of the liberties of the people and so one of the essential to the administration of justice ." 9

The history of the jury and plainly demonstrated that citizens have a right to present their evidence to jury . No act of Congress can authorize a violation of the Constitution . historically see that jury by trial is of ancient origin , characterized by " Blackstone as " glory of the English Law' and ' the most transcendent privilege which any subject can enjoyed ." *Dimick v. Schiedt* , 293 U.S. 474 , 485 (1935) Petitioner simply request trial to jury to resolve dispute when miscarriage of justice in this case is the fraud on the Court in petitioner first claims in falling to disclose valid claims , first judgment occurred by fraud , whole transition was bases on fraud . If jury refuses grant petitioner any relief that it is end of it .

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9 *Chesson v. Kieckhefer Container Co.*, 26 S.E. 2d 904, 906 (N.C.1943)

See also Oliver Wendell Holmes *The Common Law* , 1 (Dover Publications 1991)(standing [t]he life of the law has not logic :it has been experience.")

Definition of Fraud

Fraud consists of many forms and species and generally defined as any cunning or artifice used to cheat or deceive . Fraud embraced multifarious means to gain advantage another by false suggestions or suppression the true , including all surprise , tricks, cunning , dissembling , and unfair ways by witch another is cheating. Thus equity leaves open the way to punish frauds and to redress wrongs perpetrated by means of fraud in whatever form it may appear .

Important fact was ignore by Fourteenth Court of Appeal , *validity of releases* issues . This Court Judge Taft made such statement that is published in case

Wagner v. National Insurance L. Company 6 Cir. , 90 F. 395 , 61 U.S. App..691 , Judge Taft said " [page 404] " It is difficult to see how there could be any doubt about the right in action at law to void a release by reply of fraud ;" in case *George v. Tate* 102 U.S. 564 , the Supreme Court said [page 570] " it is well settle that the only fraud permissible to be proved at law in theses cases is fraud touching the execution of the instrument , such as misreading , the surreptitious substitution of one paper for another , or obtaining b y some other trick or device an instrument which the party did not intend to give."

Therefore , an insurance company fraudulently obtaining a release and fraudulently inducing a party to incur expenditures are equally actionable . Respondent s offers no reason why an insurance company should be shielded from liability for fraud of any variety ,and offers no rational explanation why respondents with insurance company should be shield from liability for all variants of fraud other than fraudulently covert blank page to releases instrument . All varieties of intentional fraud are actionable , including the fraud prepared by respondents and file with the court as valid instrument.

Facts in verification Fraud Upon the Court .

The entire proceedings has been bases on fraud. Even the stipulations the court went by to order the first claims of plaintiff is a product of material misrepresentations by attorneys that represent best interest of themselves , instead Petitioner's legal right . To support the opposition's legal agenda. Consequently, plaintiff is complaining his rights to a fair trial that had have been usurped not only the opposition misconduct of attorneys that interfered with petitioner due process other parties of interest Judges may be involved .

Since they worked hand and hand to ensure the legal and business agenda of the opposition were affirmed; albeit based on coercion, fraud and deceit.

"Fraud on the court" consists of conduct: (1) on part of officer of the court, (2) that is directed to judicial

machinery itself, (3) that is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth, that is positive averment or is concealment when one is under duty to disclose, that deceives court. (*Demjanjuk v. Petrovsky*, 10 F.3d 338, rehearing and suggestion for rehearing denied, certiorari denied *Rison v. Demjanjuk*, 115 S.Ct. 295, 513 U.S. 914, 130 L.Ed.2d 205 (Ohio) 1993. Fed Civ Proc 2654.´. . .errors are so prejudicial and fundamental that expenditure of further time and expense would be wasteful, if not futile.µ (*Salvatore v. State of Florida*, 366 So. 2d 745 [Fla. 1978], cert. denied, 444 U.S. 885, 100 S. Ct. 177, 62 L. Ed. 2d 115 [1979]).

Judges denied Petitioner from receiving due process of law in the district court of Harris County This is where the personal interest of one Judge is intakes John Anderson , who signed invalid Judgment that was revoke on November , 18, 1988. Judge that review appeal in this case . As officials of state government must respect all of the legal rights guaranteed by the constitution is owed to citizens.

Particularly under the Fourteenth Amendment that states:

> lawyers representing plaintiff perverted their discretional authority, and misapplied their power to cause devastating harm to plaintiff' legal position.

Since by sabotaging and undermining plaintiff's legal position during the proceedings, these lawyers deny him of his right to receive a fair and impartial trial. Thereby, the causational result of such professional misconduct is that with certain probability the matter of other legal claims against other parties that had been liable to petitioner.

Outrageous professional misconduct of the lawyers on both sides. an officer of the courts are all attorneys´(*People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 [1980]). Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court havebeen directly corrupted." Courts in other circuits have reached similar conclusion regarding the meaning of fraud upon the court .

"Fraud upon the court" has been defined by the *7th Circuit Court of Appeals* to " embrace that

species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented of adjudication." (Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, 60.23). The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

Fraud on the court may occur when acts of party prevent his adversary from fully and fairly presenting his case or defense (*Abatti* v. C.I.R., 859 F.2d 115, Mc., (1990). Shortly before pre -trial , hearing respondent Manley file his affidavit that was construct on fraud , that he was Samson attorneys binding by contract, however copy of the contract dispirit in may different way . Fraudulently statement by all parties jeopardizes respondent the legal process .

The Court of Appeals issues Mandate .

The determination of the Court of Appeals in this case is unremarkable : the court simply concluded that petitioner's right end or become " final " when the Court of appeals issued its mandate, the last act on petitioner's appeal . Petitioner filed motion to stayed or recall mandate and any of the respondents do not opposite petitioner request . The

Court of Appeals denied to stayed or recall mandate . The parties place great reliance on the definition of "final" this Court has used " for purpose of retroactivity analysis " in cases such as *Griffith v. Kentucky* , 479 U.S. 314 (1987) and *Teague v. Lane* , 498 U.S. 288(1989) ; see *Caspari v. Bohlen* , 510 U.S. 383, 390 (1994) . But this Court make clear that non -statutory -definition of " finality " used in this cases derives from basis norms of constitutional adjudication ." *Griffith* , 479 U.S. at 322

Congress has the authority to overrule wrongly decide cases *Wesson v. United States* , 48 F. 3d 894, 901 (5 Cir.1995)

This Court is bound by the law of nations which is a part of the law of the land."
defeats standing).

In addition to the forgoing cases, Congress has recently relied on the *Oxendine v. Kaplan* 241 F.3d 1272, 1275(10 th Cir.2001) and *Boiln v. Story* , 225 F.2d 1234 (11 th Cir.200) , the plaintiffs' allegation of unconditional delegation of Article III authority to law clerks and staff attorneys in pro sc proceeding would appear to state such a claim . This case reflected the same issue Petitioner was victim of ignorance . Judge in district court do not read his Motion or Petitions , ignore all important issues of facts , even when respondent [Manley] give many different versions what happen with the contract that never exist .

Congress has the power to counter judicial doctrine *Belgrad v. State of Hawaii*, 883 F.Supp.510, 514 (D. Hawaii 1995)

It may be necessary for Congress to visit this issues

CONCLUSION

The petition for write of certiorari should be granted , the judgment of the court of appeals should be vacated , and the case should be remanded for future consideration . Mandate should be recall ,

Date : August5, 2010

Respectfully Submitted

Fred Samson
1143 Yale
Houston, Texas 77008
(713) 869-2031
Pro sc Petitioner

Fred Samson

CERTIFICATION OF COMPLY WITH RULE 33

Booklet format : 6 1/8 - by 9 ¼ : tex filed : not excced 4 1/8 by 7 1/8 ; text appear on both sides of the page : Words less than 9000:

Respectfully Submitted

/s/
Name : Fred Samson (pro sc)

Dated August 2, 2010

CERTIFICATE OF SERVICE

Petitioner , Fred Samson , herby certifies , under penelities of perjury that I have made service , on this date August 4, 2010 , of the Pettion for Write of Certiorari . Servces was made upon counsel for each other party certify later return recepit requeste , address as follow :

Melisa Davis
Ware Jackson Lee & Chambers
2929 Allen Parkway Floor 42
Houston, Texas 77019
James Mnaley
200 Willam Barnet
Cleveland Texas 77327 Respectfully Submitted

Name Fred Samson (pro sc)

APPENDIX AB

TABLE OF AUTHORITIES -Continued

ARTICLES AND PUBLICATION

Moore's Federal Practice, 2d ed., p. 512, ...
The Shareholders ' Derivative Suite : Notes on Its 7
Moore's Federal Practice, 2d ed., p. 512, ...
Mass Declaration of Rights , art. 29 14
Oliver Wendell Holmes *The Common Law* , 1 Dover Publications 1991)
Oliver Wendell Holmes *The Common Law* , 1 (Dover Publication1991.....18

App. A. 1
Cause no. 2005-59467

FRED SAMSON	§	IN THE DISTRICT COURT
	§	
Vs.	§	HARRIS COUNTY, TEXAS
	§	125 TH JUDICAL DISTRICT
HIGHLANDS INSURANCE COMPANY , ET ,AL		Filed on November, 2,2007

FINAL JUDGMENT

All of the claims of plaintiff in this case have been resolved trought summary judgment in favor off the defendats .

It is Ordered , Adjudged and Decreed that the plaintiff take norhings for his claims aginst the defendats .

Court costs are taxed aginst the plainitff

This is a Final Judgment and all relief not granted is denied .

Signed November, 2,2007 /s/

Judge John Coselli

[logo]

UNPUBLISHED
In the Fourteenth Court of Appeals

Fred Samson
v. Plaintiff/Appellant
James Manley and No. 14-07-01085-CV
Don Jackson
Defendants /Appellees

October, 6, 2009.

On Appeal from the 125 th District Court of Harris County , Texas trial Court Cause No. 2005-59467
Panel consists of Justice Anderson, Guzman and Boyce

MEMORANDUM OPINION

This is appeal from the granting of two motion for summary judgment in favor of Appellees, James Manley and Don Jackson . Appellant agues the trial court erred in granting the summary judgment . We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant sued his formers attorney, appelle James Manley , who represented him during settlement negotiations in a 1988 worker's compensation suit. He also sued the opposite counsel representing the

employer's liability insured in the worker's compensation suit, appellee Don Jackson . Mnaley and Jackson both filed summary judgment motions on appellant's claims and both were granted by trial court . Appellant argues the granting of theses motion was in error .

Appellant , Fred Samson , was employed by Bowen Tool Ins in early 1980's. On August 21, 1984, appellant sustained an -on job injury and filed a worker's compensation claim with Industrial Accident Board of the State of Texas . The Industrial Accident Board entered appellant's award on February 23, 1987. On March 1, 1987 , appelant filed suit in Harris County District Court against Highlands Insurance Company , Bowen Tools' liability insurer , to set aside the award of the Industrial Accident Board . [3] Before going to trial , the parties reached a settlement agreement. The trial court entered a final judgment on December, 9, 1988 approving the settlement agreement In its judgment , the trial court set side the award of the Industrial Accident Board and ordered , pursuant to the parties' settlement agreement , appellant take $ 34,000.00 in full and final judgment of his claims for worker's compensation benefits , twenty -five percent of which was awarded to his attorneys, appellee James Manley, as reasonable attorney fees. Additionally, the trial court ordered.

Highlands Insurance Company to pay medical expenses , including hospitalization , but not limited thereto, reasonable related to plaintiff a injure and necessary for his treatment for the remained lifetime. The final judgment was signed by appealed Don Jackson and attorneys of the law firm of Vinson & Elkin representing Highlands Insurance Company , appelee James Mnaley , an attorneys at the law firm of Manley & Alter representing appellant and appellant Fred Samson -all of whom were present at the settlement conference .

---

1 The factual recitation is stated in the light most favorable to the non-movant , including every reasonable inference , and resolving any doubts against the motion. City of Keller v. Wilson , 169 S.W. 3d 802, 824 (Tex.2005), Mathis v. restoration Builders, Inc., 231 S.W. 3d 47, 50 (Tex App. Houston [14th Distri]2007, no pet.)

2 In his brief , appellant claims he never saw or knew the award of the Industrial Accident Board .

3 Appellant was represented by attorney Howard Thompson during proceeding with the Industrial Board and when he file suit to set aside his award

Due to disagreement with his attorneys , but the time the parties agreed on a settlement appellant was being represented by his fourth attorney, appellee James Manley . During the settlement negation , but before the final agrrment ws reached , Claude Masters an attorneys at Manley's firm, Manley & Alter , represent appellant . Master left Manley & Alter before the trial court entered final judgment on the settlement agreement . Appellee Manley assumed the firm's responsibilities to represent appellant .

Appellee Don Jackson's only involvement is the settlement agreement was through his representation of then-defendant, Highlands Insurance Company . Jackson as not the insurance carrier's in-house counsel, but was a retained attorneys employee by law firm of Vinson & Elkins .

In January of 2004 , Highlands Insurance Company ceased making Payment to appellant . The record indicates Highlands had become insolvent sometime in 2003 . The discontinuance of appellant' medical payment was the catalyst of this lawsuit .

On September, 14, 2005, appellant acting pro sc, filed suit in Harris County District against Highlands Insurance Company . Appellant alleged

four different " cause of action; Breached contract , negligence , mental anguish and conspiracy ."[4] Appellant sought fifty-five million dollars in damages .On July 21, 2006 , appellant filed a "Motion for Leave .to File Multiplies Defendants." Pursuant to this motion, appellant added six new defendant including Bowen Tool Inc, Halliburton Co., Dr. John DeBender , Dr. Boris Rubashkin , Jamne Manley , and Don Jackson . He also added a mélange of new alleged cause of action and damages theories ,including : constructive fraud , conspiracy ,

---

[4] Appellant is not proficient in his use of the English , as native language appears to be Polish

Breached [sic] of duty, intentional infliction of emotional distress , deceptive trade practice, mental anguish , stress depression , lost [sic] of past and future capacity [sic], pain past and future [sic] mental and physical pain and suffering [sic] long battle of pleading ensured. By August 17, 2007 , all defefednats , with the exception of appellees Manley and Don Jackson were granted disparities relief .The trial court signed an order serving Manley and Jackson from the other defendants.

On July 5, 2007 , appellee Don Jackson filed a motion for summary judgment. On August 10, 2007 , Appellant filed a document titled " Plaintiff's Motion for Leave cy to response to defefednats Don Jackson 's Motion for No-evidence Summary Judgment and Motion for Continuance ." The substance of this

document appears to be response to Jackson's motion for summary judgment . On August 22, 2007 , the trial court granted Jackson's motion without specifying any particle grounds upon witch summary judgment was being granted .

October 22, 2007 , appellee many filed a motion for summary judgment . Appellant filed a response and the court held hearing on the motion . On October, 29, 2007 the court granted Manley's motion , but again did not specify particular grounds.

On November 2, 2007 the trial court signed a final judgment stating " [a]ll of the claims of plaintiff in this case Have been resolved troughs summary judgment in favor of defendants." Appellant filed multiple motion for new trial, all of which were denied. Eventually , appellant filed notice of apple from summary judgment granted in favor of Manley and Jackson .

DISCUSSION

1. Did the trial court err in granting Manley's Motion for Summary Judgment ?

Appellant argues the trial court erred in granting Manley's hybrid motion for summary judgment .Appellant's specific points of error are less then clear: however , he implies genuine issues of material facts preclude summary judgment . Additionally , he asserts new arguments on appeal, which we need not address . See *San Jacicnto River Auth v. duke* , 783

S.W. 2d 209 , 209-10 (Tex. 1990)(holding a litigant must present its complaint to the trial court to preserve the argument on appeal) .

A. Standard of Review .

We review the trial court's summary judgment de novo. *Provident Life & Acc Ins. Co., v. Knott* , 128 S.W. 3d 211, 215 (Tex. 2003) . When a party moves for summary judgment on both traditional and no-evidence grounds and the trial court does not specify which it granted ,we uphold the summary judgment on either grounds . See *Taylor .v. Carley* , 158 S.W. 3d 1, 8(Tex .App.-Houston [14th Dist.]2004, pet.denied)

Under the traditional summary judgment standard of review , a movant has the burden to demonstrate at trial level that there are no genuine issues of material facts, and he is entitled to judgment as a matter of law. *KPMG Peat Marwick v. Harrison County Hous. Fin Corp.*, 988 S. W 2d 746, 748 (Tex.1999). In determining whether there is a genuine facts issues precluding summary judgment evidence favorable to the non-movant is taken as true and we make all reasonable inferences in his favor . Id. A movant is entitled to summary judgment only if he conclusively proves all essential elements of his claim. *Johnston v. Crook*, 93 S.W. 3d 263, 273 (Tex .App.-Houston [14th Dist.]2002, pet. Denied).

In a no-evidence motion for summary judgment , the movant must specifically state the element as to

which there is no evidence . *Walker v. Thomasson* Lumber Co., 203 S.W. 3d 460, 473-74(Tex.App.-

Houston[14 th dist.]2006, no pet.). The trial court must grant the motion unless the respondent produce summary judgment evidence raising a genuine issues of material fact. Tex.R.Civ.P.166 a(i).However, the respondent is ' not required to marshal its proof: its response need only point out evidence that raising a fact issues on the challenged elements ." *Hamilton v. Wilson* , 249 S.W. 3d 425, 426 (Tex.2008)

A no-evidence summary judgment is essential a pretrial directed verdict, and we apply the same legal sufficient standard in reviewing a no-evidence summary judgment as we apply in reviewing direct verdict . *Mathis* , 231 S.W. 3d at 50. We review the entire record in light most favorable to the non-movant including every reasonable inference, and resolving any doubts against the motion . *City of Keller,* 168 S.W. 3d at 824. We sustain a no-evidence summary judgment if (1) there is a complete absence of proof of a vital facts (2) rules of law or evidence bar the court from giving weight to only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is not more than a scintilla, or (4) the evidence conclusively establish the opposite of a vital fact . *Walker* , 203 S.W. 3d at 474. Less than a scintilla of evidence exist when the evidence offered to prove a vital facts is so weak as to do no more than created a mere surmise or suspicion of its existence , and in legal effect is no evidence .

Ford Motor co., v. Ridgway, 135 S.W. 3d 598, 602 (Tex.2004) More than a scintilla of evidence exist when the evidence raise to a level than would enable reasonable and fair -mind people to different in their conclusion as to the existence of the vital fact .Id.

B. Analysis

In appellant's fifth amended petition he explained what we constructed to be the basis of his lawsuit. The following is quoted from his petition :

.....James Manley .....Don Jackson , all the parties are either directly or indirectly contributes to plaintiff damages ,, base of there action or intentions . All this parties that are part of this claims are or have been liable . Because those parties have prepared a fraud and engaged in Civil conspiracy , conspiracy to defraud, conspiracy to conversion , releases is fraud, constructive fraud, civil theft or conversion, violation of Bulk Sale Act. Breached of contract by employer , plaintiff was /is entitled to some benefits from previous employer...All the party in this suite intentionally or with reckless abandon cause serve emotional distress to Samson and his family. [sic] .

We construct this to encompass the following cause of action : (1) fraud , (2) Civil Conspiracy , (3) Theft And conversion (4) Violation of the Bulk Sales Act, (5) Breached of Contract and (6) Intentional

Inflection of Emotion Distress . Manley file a hybrid motion for summary judgment . He argues there is no evidence supporting any of appellant's cause of action and moreover, all appellant's claims are barred by two and four years statues limitation . Appellant failed to attached any evidence to his response . We will only address the no-evidence portion of Manley's motion because it is dispositive of this appeal in regard to appellee Manley .

1. Fraud

To recover on an action form fraud the plaintiff must prove: (1) material representation was made, (2) the representation was false , (3) when speaker made the representation , he knew it was false or made it recklessly without of the truth as a positive assertion, (4) the speaker made it with the intention that it should be acted upon by the party, (5) the party acted in reliance upon it, and (6) the party thereby suffered injury. *Solutionerers Cautioners Consulting Ltd. V. Gulf Greyhound Partners , Ltd,* 237 S.W. 3d 379 , 386 (Tex. App.-Houston [14th Distr.]2007 , no pet.). In this summary

judgment motion, Manley argued there is no-evidence to support any of the element of fraud .

Appellant alleged engaged in fraud , conspiracy to defraud , and constructive fraud. He claims his signature in the final " settlement agreement was

produced by fraud because Manley did not explained the settlement agreement to him and he admitted signed without reading the agreement . However , appellant fails to point to a specific false representation by Manley . Mere conclusory statements do not constitute effective summary judgment proof and need not be given the same presumption force as allegation of fact . *Abbott laboratories, Inc., v. Segura*, 907 S. W. 2d 503, 50o8 (Tex.1995) . Moreover , appellant attached no evidence to this motion .See Tex. R. Civ .P. 166(i) (" The court must grant the motion unless the respondent produce summary judgment evidence raising a genuine issues of material fact."). Appellant's allegation of fraud amount to conclusory accusations and he present no evidence raising a genuine of material fact on any element of his fraud cause of action . *See Seguara* , 907 S.W. 2d at 508 . Specifically , appellant did not point to a single specific misrepresentation upon which he bases his claim. The Trial court did not err in granting summary judgment on this claim

2. Civil Conspiracy

To recover on action for civil conspiracy , the plaintiff must prove: (1) the defendants and another person acted together , (2) they acted to accomplish an object (an unlawful purpose or a lawful purpose by unlawful means) , (3) they had a meeting of the minds on the object or course of

action , (4) they committed one or more unlawful acts, and (50 the plaintiff suffered damages as the proximate result of the unlawful acts . *Ins Co., Of N. Am. V. Morris* , 981 S.W. 2d 667 , 675 (Tex.1998) .

In his motion for summary judgment , Manley argued there is no evidence supporting any on the element of conspiracy .

Appellant provides no-evidence of conspiracy and merely alleged that " all defefednats conspired against him because he is not proficient in English and is a " simple " blue collar worker . One of the assessorial required to establish a civil conspiracy is a meeting of the mind on the object or course of action . *Schlumberger Well Surveying Corp.* v. *Nortex Oil & Gas Corp.* 435, S.W. 2d 854, 857 (Tex.1969) . There is no evidence of a meeting of minds between defendants. Appellant points out no specific facts establishing any of the elements of conspiracy . Appellant did not attach any evidence of conspiracy to his response as required by rule 166a(i) see Tec.R.civ.P.166 a(i). Specifically , appellant presented no evidence on the third element of conspiracy , a meting of minds . The trial court did not err in granting Manley's no-evidence motion for summary judgment .

3. Civil, Theft and Conversion .

To establish a claim for conversion , a plaintiff must prove: (1) title , (2) right to possession and (3)

a demand to return of the property unless the possessor's acts manifest a clear repudiation of the plaintiff's right . El Paso Prod. Co., v. Valence Operation Co., 112 S. W. 3d 616, 625 (Tex .App.-Houston [1stDist]2003, pet denied) In this motion for summary judgment Manley argued there is no evidence supporting any of the elements of conversion .

Appellant presented no evidence providing he had title to a specify piece of property. Further , he only states a claim for "conversion " or " civil, theft " without reference to any specific facts . Therefore, he has presented no evidence as to first element required to establish a claim for conversion .

Summary judgment was not granted in error on this claim.

4. Violation of the Bulk Sales Act

Although appellant includes an allegation concerning the Bulk Sales Act, it was repealed in 1993 and is inapplicable to the facts of this case . Bulk sales are governed by provision of Chapter 6, of the Business and Commerce Code , commonly referral to as the Bulk Transfer Act. *Rome Indust. Inc. v. Intsel Sw.* , 683 S.W> 2d 77, 779 (Tex. App.-Houston [14 th Dist.] 1984, writ ref'd n .r .e.) A Bulk transfer is defined as " any transfer in bulk and not in the ordinary course of the transfer's business of a

major part of the materials , supplies, merchandise or other inventory of an enterprise subject to this chapter." Id; Act 1965 , 59 th leg., vol. 2. Part 109 §§6-10 to 6-101 and Acts 1967, 60 th th Leg., p 2343 ch.785 § 1, repealed by Acts 1993, 73 rd Leg.ch.570 § 16 , eff. Sept.1, 1993, even assuming the Bulk sales Act had not been repealed in 1993, appellant still present no evidence on any of the required elements. Particularly , appellant provides no evidence of a " transfer in bulk ; as required by the statues . Therefore, w concluded the trial court did not err in granting summary judgment on this claim.

5. Breached of Contract

To recover on an action for breached of contract , a plaintiff must prove : (1) the existence of a valid contract , (2) performance or tendered performance by the plaintiff , (3) breached of the contract by the defendants and (4) damages sustained by the plaintiff as result of the breach. *Aquiar v. Segal* 167 S.W. . 3d 443, 450 (Tex .App.-Houston [14 th Distr.] In this motion for summary judgment , Manley argues there is no evidence demonstrated Manley breached the employment contract between appellant and the law firm of Manley & Alter . We find this statement disparities of appellant's

breached of contract claim. In making this statement , appellant explicitly states there is no evidence on the first required element of a breached of contract claim. The trial court did not err in

granting summary judgment on this claim .

6.Intentional Infliction of Emotional Distres.

To recover on action for intentional infliction of emotional distress , a party must prove: (1) the defendant acted intentionally or recklessly , (2) the defendant's conduct was extreme and outrages , (3) the defendant 's action caused plaintiff emotional distress , and (40 the resulting emotional distress was severe . *Hoffman -La Roche Inc, v. Zeltwanger* , 144 S.W. 3d 438, 445 (Tex.2004). Manley argue appellant has not produce any evidence in support of any element on his intentional infection of emotions distress claim . We agree.

Extreme and outrageous conduct is conduct " so outrageous in character , and so extreme in degree, as to go beyond all possible bounds of decency, and to be regard ass atrocious , and utterly intolerable in a civilized community ." Id (quoting *Twyman v. Twyman* , 855 S.W. 2d 619, 621 (Tex.1993)). Appellant has not alleged any conduct raising to the level of extreme or outrageous conduct . The basis for this cause of action appears to be that appellant contents Manley took advantage of appellant because does not speak English well and is not well-educated Appellant's allegation are consolatory and he raised no genuine issues of material fact on any of the element of intentional infliction of emotional stress . Therefore, the trial court did not err in granting summary judgment on the claim .

7. Summary Judgment was properly for James Manley

Appellant present no-evidence to support any of his cause of action . Accordingly , the trial court not err in granting summary judgment on all of appellant's cause of action .

II. Did the trial court err in granting summary judgment on all of appellant's cause of action . ?

Appellant plead the same cause of action against Jackson as he did against Manley , which we construe as : (10) Fraud, (20 Civil Conspiracy, (3) Theft and Conversion (4) violation of the Bulk sales Act , (5) Breached of Contract , and (6) Intentional Inflection of Emotion distress . Jackson files a hybrid motion for summary judgment arguing , (1) as appellant's opposing counsel in the settlement agreement Jackson did not own appellant a duty , (2)Jackson has qualified immunity for all action taken in the course of litigation, (3) appellant has present no evidence supporting any of his cause of action , (40 to the extent any cause of action does exist , it is barred by statues of limitation s.

Appellant responded claiming : (1) Don Jackson ahs a public duty to protect the public interest from any wrongdoing by any party involved in that case or any other case ,(2) Don Jackson had a public obligation to asks any attorneys representing appellant to rescue him or herself if Don Jackson had

knowledge such attorneys preciously represented Highlands Insurance or herself if Don Jackson had knowledge attorneys preciously represented Highlands Insurance Company , (3) Don Jackson engaged in conspiracy with James Manley and Claude Masters to defraud appellant , (4) the court must rest the summary judgment hearing because appellant did not have adequate time to conduct discovery . Appellant did not present any evidence precluding the trial court's granting Jackson 's no evidence summary judgment motion . Because we find Jackson's no evidence portion of motion dispositive of this appeal, it is only necessary to address that portion of his motion .

A. Standard of Review

The standard of review used to evaluated a mixed motion for summary judgment is et out above in section I. A.

B. Analysis

Appellate Jackson filed no-evidence motion as to of appellant's alleged cause of action . As discussed below , appellant fails to present competent summary judgment evidence on any of his cause of action .

1. Fraud

To recover on an action for fraud , the plaintiff must prove : (1) material representation was made , (2) the representation was false , (3) when the

speakers made the representation he knew it was false or made it recklessly without knowledge of the truth as a positive assertion , (4) the speaker made it with the intention that it should be acted upon by the party , (5) the party in reliance upon, it and (6) the party thereby suffered injury. *Solutioneers Consulting Ltd.*, 237 S.W. 3d at 385. Jackson asserts appellant cannot produce a scintilla of competent summary judgment evidence to support any of the element of his claims for fraud , conspiracy to defraud , or constructive fraud .

Appellant responded by claiming , " Don Jackson with James Manley , Claude Maters to have been guilty to such conspiracy to defraud plaintiff Fred Samson and taken advantage of his illness and not much knowledge of medical or legal issues [sic] appellant's argument is conclusory and raised no-evidence as to any of the elements of fraud. Summary judgment evidence is considered conclusory it does not provide the underlying facts to support the conclusion . *Dolcefino v. Randolph* , 19 S.W. 3d 906, 930 (Tex.App.-Houston[14 th District.] 200, pet .denied). Appellant points to no underling facts supporting his connection of fraud . Appellant has filed to present competent evidence of a single element of fraud . The trial court did not err in granting Jackson's no-evidence summary judgment motion on the issues of fraud .

2..**Intentional infliction of emotional Distress**
To recover on action for intentional infliction of

emotional distress , a party must prove: (1) the defendants acted intentionally or recklessly , (2) the defendants' conduct was extreme and outrageous (3) the defendant's actions caused the plaintiff emotional distress and(4) the resulting emotional distress was serve .*Hoffman -La Roche Inc.*, 144 S.W. 3d at 445. Jackson assert appellant cannot produce a scintilla of competent summary judgment evidence to support his claim for intentional infliction of emotional distress .

Appellant does not present any evidence or make any argument regarding his intentional infliction of emotional distress claim. The trial court did not err in granting Jackson's summary judgment motion on this claim .

3. Breached of Contract

To recover on an action for breach of contract , appellant must prove (1) existence of a valid contract (2) performance or tendered performance by plaintiff, (3) breached of the contract by defendant , and (4) damages sustained by the plaintiff as result of the breach. *Aguiar*, 167 S.W. 3d at 450. Jackson asserts appellant prove a scintilla of competent summary judgment evidence to support a

single element of breached of contract or breached of employment contract . Appellant present no evidence as to a single element of his claim for breached of contract . Furthermore, appellant makes no argument regarding his breached of contract claim.

The trial court did not err in granting Jackson's motion for summary judgment on this claim .

4. Civil Conspiracy

To recover on an action for civil conspiracy , the plaintiff must prove : (1) the defendant and another persons acted together (2) they acted to accomplish an object (an unlawful purpose or a lawful purpose by unlawful means), (3) they had a meeting of the minds an object or course of action, (4) they committed one or more unlawful acts, and (5) the plaintiff suffers damages as the proximate result of the unlawful act. *Inc, Co. Of N. Am,* 981 SW.2d at 675 Jackson assert appellant cannot produce a scintilla of competent summary judgment evidence to support a single element of his claim for conspiracy .

Appellant merely alleged Jackson engaged in conspiracy with Fred Samson and the other defendant to take advantage of the appellant's lack of legal training , lack of education , and poor health . Appellant present no evidence than conclusory allegations. Mere conclusory the same presumption force s allegation of fact. *Segura* , 907 S.W. 2d at 508 .The trial court not err in granting Jackson's no-evidence summary judgment on this claim.

5. Conversion and Civil Theft

To establish a claim for conversion a plaintiff must prove: (1) title (2) right to possession , and (3) a demand for the return of the property unless the possessor's act manifest clear repudiation of the plaintiff's right El Paso Prod. Co., 112 S.W. 3d 625, Jackson assert appellant cannot produce scintilla of competent summary judgment evidence to support a single element of his claims form conversion and/or civil theft .

Appellant presents no evidence nor makes an argument regarding his claims for conversion . His claim for conversion and./or civil theft is wholly unsupported . The trial court did not err in granting Jackson's motion for summary judgment on this claim .

6. Violation of Bulk Sales Act .

For the same reasons we held the Bulks sales Act did not apply to Manley, we hold it does not apply to appellee Jackson. Furthermore , even assuming the Act had not been repealed , appellant presented no evidence of a transfer in bulk as required by the act. The trial court did not err in granting Jackson 's no-evidence motion for summary judgment on this claim .

7. Summary Judgment was properly granted for Don Jackson

Appellant did not present even scintilla of evidence on any of this cause of action .Therefore , the trial court did not err in granting Jackson's no-evidence

motion for summary judgment to each of action alleged by appellant .

CONCLUSION

We affirm the judgments of the trial court granting both Manley's and Jackson motion for summary judgment on all causes of action .

/s/ John hn S Anderson
Justice

Panel consists of Justice Anderson , Guzman , and Boyce .

App. C 24.

The Supreme Court of Texas
Post Office Box. 12248
[logo] Austin , Texas 78711 (512) 0463-1312

July 01,2010

Mr. Fred Samson
1143 Yale
Houston, Texas 77008

Mr. .James B Manley
James B. Manley P.C
200 S William Barnett
Cleveland , TX. 77327

Ms. Melissa M. Davis
Ware Jackson Lee & Chambers, LLC
2929 Allen Parkway
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Houston, TX.77019

RE: case Numbered 09-0146
Court of Appeals Numbered 14-07-01085-Cv
Trial Court Numbered : 2005-59467

Style : Fred Samson
v.
James Manley and Don Jackson

Dear Counsel:

Today the Supreme Court of Texas denied " Petitioner request to prepared , Order, or memorandum and/or Judgment " in the above - reference case .

Sincerely
/s/ Blake A. Howthorne, Clerk
by Jessica Hamby deputy Clerk

App. D. 25

The Supreme Court of Texas
Post Office Box. 12248
[logo] Austin , Texas 78711 (512) 0463-1312

May 07,2010

Mr. Fred Samson
1143 Yale
Houston, Texas 77008

Mr. .James B Manley
James B. Manley P.C
200 S William Barnett
Cleveland , TX. 77327

Ms. Melissa M. Davis
Ware Jackson Lee & Chambers, LLC
2929 Allen Parkway
American Tower 24 nd Floor
Houston, TX.77019

RE: case Numbered 09-0146
Court of Appeals Numbered 14-07-01085-Cv
Trial Court Numbered : 2005-59467
Style : Fred Samson
v.
James Manley and Don Jackson

Dear Counsel

Today the Supreme Court of Texas denied the motion for rehearing of the above cause reverend petition for review

Sincerely
/s/ Blake A. Howthore Clerk
by Jessica Hamby

Cc: Mr. Christopher A. Prine
Mr. Loren Jackson

App. E. 26

The Supreme Court of Texas
Post Office Box. 12248
[logo] Austin , Texas 78711 (512) 0463-1312

February 07,2010

Mr. Fred Samson
1143 Yale
Houston, Texas 77008

Mr. .James B Manley
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200 S William Barnett
Cleveland , TX. 7732

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Ware Jackson Lee & Chambers, LLC
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RE: case Numbered 09-0146
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v.
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Dear Counsel:

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Sincerely cc:
Blake A. Howthorne,
by Jessica Hamby Deputy Clrk

cc: Mr. Christopher A. Prine
Mr. Loren Jackson

[logo]

MANDATE
The Fourteenth Court of Appeals
No. 14-07-001085-CV

FRED SAMSON	Appeal from the 125 District Court of
v.	Harris County (Tr.Ct No.2005-59467
JAMES MANLEY AND DON JACKSON	Memorandum Opine deliver by Justice Anderson , Justice Guzman and Justice Boyce also participating

TO THE 125 TH DISTRICT COURT OF HARRIS COUNTY,GREETING.

BEFORE OUR Court of Appeals , on this the 6 th day of October A.D. 2009 , the cause upon to review or reverse your judgment was determined . Our Court of Appeals made its order in theses words :

This cause , an appeal from the judgment in favor of appellees , James Manley and Don Jackson , signed October, 6, 2009 . Was hear on the transcript of the record . We have inspected the record and find no error in the judgment . We order the judgment of the court below AFFIRMED .

We order appellant Fred Samson , jointly and severally , to pay all cost incurred in this appeal. We future order this decision certifies below for

observance .

WHEREFORE , We COMMAND YOU to observe the order of our said Court in this behalf and in all things have it duly recognized , obeyed , and execcuted.

WITNESS the Hon Adele Hedges , Chief Justice of our Fourteenth Court of Appeals , with the Sel thereof affixed, at the City of Houston date may 21, 2010.

CHRISTOPER A. PRINE, Clerk

[logo] /s/

Thursday , June10, 2010

Fourteenth Court of Appeals ,
1307 San Jacinto
Houston, Texas 77002

Re. Case No. 14-07-01085-CV

Style Fred Samson
V. James Manley and Don Jackson

Please be advice that on this date the Court Denied appellant's motion to recall mandate and correct mandate in the above cause ; court's planetary power has expired .

T.C. case 2005-59467

Christopher A. Prine,
Clerk

174

(2)

Supreme Court, U.S.
FILED
NOV - 3 2010
OFFICE OF THE CLERK

No. 10-183

In The Supreme Court Of The United States

FRED SAMSON
Petitioner

v.

JAMES MANLEY et, al
Respondent (s)

On a Write of Certiorari to the Supreme Court of Texas

PETITION FOR REHEARING

James Manley P.C
200 William Barnett
Cleveland , Texas 77327
(281) -593-1100

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PETITION FOR REHEARING

Petitioner [referred to herein as "Samson"] Submit this petition for rehearing pursuant to this Court's Rule 44.2 because of " intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously present ." Samson filed petition for write of certiorari (Docket Case No. 10-183) on August 6, 2010 . Certiorari was denied by this Court on October 12, 2010

ARGUMENT

It is unusual for this Court to grant rehearing and grant plenary review , but it is far more common for this Court to grant rehearing and then grant certiorari, vacate the judgment below , and remand ("GVR order") for consideration of intervening decision of this Court . *E.g ., Skilling v United States* 08-1394 (June 24,2010) *McNally v. United States* , 483 U.S. 350 (1987).

This Court 's ' broad power to GVR" *Lawrence* v. *Charter* , 516 U.S. 163 , 166 (1996) (peer curiam)

Is derived from 28 U.S.C.§ 2106 , which authorizes this Court to " vacate *** any judgment, "remand the cause." any " required such further proceeding *** as may be just under circumstances." A GVR order ,is appropriate that issues exist that lower court may reject given the opportunity for future consideration and [ii] *** it appears redetermination may determine the possible outcome of the litigation . *Charter* , 516 U.S at 167(emphasis added)[1]

It is Supreme Court standard practice of entering a GVR order where as here an intervening decision of this Court has cast serious doubt on a court of appeals' decision :

This case involves a fundamental Right involving Balance of power between the People and the Government as crafted by Farmers centuries early To deny certiorari

would be deny of Due Process arbitrary apricious and an abuse of judicial direction . The Constitution on is all that stands between the People and total tyranny and despotism ,it is unable to defend itself .If a free people cant's defend in an Article II court , who can?

The Court most certainly has the obligation tohear and determined first impression cases such as this dealing as it does with the construction ofthe Constitution , that is its essential role .To fail to do so would be an abdication of its primary duty.

In *Flora v. United States* , 362 U.S. 145, 167 (1960), rehearing was granted on petition " focused almost exclusively upon a single clause in the prior opinion " dealing with the uniformmity of certain past litigation practices . In *Maryland for the Use of Levin* v. *United States* , 382 U.S. 159(1965) , where rehearing was granted solely to modify the Court's judgment so as to permit further proceedings below on unresolved issues in the original complainants .

This Court 's decision illustrated in *Florida v. United States* , 461 U.S. 940(1983) willingness to grant rehearing when its grant review in related issues in another case [1]

Question not presented in the original petition do not foreclosure upon rehearing even though the statutory period for filing petition for certiorari may have expired in the meantime in *White v. Texas* 309 U.S 631 (1939) 310 U.S 539 (1940). The Court's jurisdiction over the case is establish by a timely petition for certiorari . The issues that may then or thereafter be considered depend solely upon the Court decision .

1 More recently however the Court denied a petition for rehearing that had been kept on the cot docket during the pendency of a case raising a related issues .In a Day v McDonough 126 S Ct 1675 , 1680 n 2 (2006)

The Supreme Court may on its own motion , vacate an order denying certiorari even thought no petition for rehearing had been filed, if facts that would induce it to grant a rehearing come to its attention . Only Supreme Court revising itself sua sponte in the facts that, subsequent to the denial of certiorari , review has been granted in some other case raising identical or very similar issues. E.g. *Bowden v. Fort Smith* 316, U.S. 584, 589 (1942).

How many the citizen view this " monarchial " power in view of Justice *Samuel Miller's* opine in the *U.S. v. Lee* 106 U.S. 196, 220 1882 , that No man is so high that he is above the law . All...officers are creatures of law and are bounded to it ?

It is clear that Constitution both defines the parameters of legitimacy while yet conferring on the Judges , lawyers officer of the court with authorities to protect civic rights but not placing them thereby "outside" those parameters .

Most likely "due process is flexible and call Such procedure protection as the particular Situation demands *Morrisey v. Brewer* 408 U.S. 471, 481 (1972) Due process required at same level , that punishment be commensurate with the same the wrong conduct see Solem v. *Helm,,* 463 U.S> 277 , 284 – 290 .

United States Constitution Amendment IX Section 1 specifically pointed that :

" No states shall make or enforce any Law which shall abridge the privileges and immunity of citizens of the United States :; nor shall any States deprive any person of life , liberty , or property , without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

BEST AVAILABLE COPY

Reasons to Grant Rehearing

This Court grant certiorari also in few cause such as ; *Hamilerschmidt v. United States* , 265 U.S (1924) on related charged like in petitioner claim such fraud, conspiracy and other issue related to fraud as to " defraud" United States . In case *MCNally v. United Sates* 483 U.S. 35 (1987) certiorari was also grant in cause *Skilling v. United States* 08-1394 (August 2010) Skilling case has familiar issues that closely reflected in Samson petition for a write of certiorari .

Petitioner issues present in his Petition for a Write of Certiorari and also present in this request for Petition for Rehearing are not foreign to this Court. This Court deal and review many similar cases and grant certiorari or Petition for rehearing many time in the past and present longer

Petitioner cause is complex that involves many different not resolved issues that not all had been presented in his Petition for write certiorari . In case *Skilling v. United States* Court charged Skilling with deceive investor, making false statement conspiracy "honest services " deprive shareholders of the intangible property .

Each case may be similar but will be also different, some issues may be exactly the same but approached can be differrent with different result we see In case *Pallas Shipping Agency ,LT v. Duris* 461 U.S. 530 certiorari was granted the issue involved of compensation reward . When Duris accepted the compensation under Act , with fully knowledge that he was not entitled to sue third parties, because all such fact had been explained to him . However when person do not accepted benefits , instead request trial and was defraud in the process, such issues need to be review

"The Act [as originally enacted in 1927] required a longshoreman to chose between the receipt i of compensation award from his employer and a damages suit against the third party Act of March 4, 1927, § 33, 44 Stat.1440 ."

As the House Committed explained :

" acceptance of compensation without knowledge of the effect upon such right may work grave injustice . The assignment of this right of action against the third part might properly be contingent upon the acceptance of compensation under an award in a compensation order issued by deputy commissioner , thus giving opportunity to the injury person ....to consider the acceptance of compensation from the employer with the result loss of right to bring suit in damages against the third part .

H.R .Rep. No. 1945, 75 t Cong Sess., 9,

It would be unfair for the Samson if the Court to fail to hear this case involving a first impression question of public importance ,i.e. the constitutional meaning of *Fourteenth Amendment* of Section 1 while agreed to hear many cases of far laser important , including the bankruptcy defamation/probate .

> " In *Cohen v. Virginia* Chief Justice Marshall famously cautioned : "It is most true that this Courts will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction , if it should..... We have no more right to.. decline the exercise of jurisdiction which is given , than to usurp that which is not given ." 6 Wheat .264 , 404 (1821)

Conclusion

The Court should grant petition for rehearing , vacated the order denying certiorari and enter the order that grant petition for certiorari in all or some aspects, toget with such other future relief as may be just under this circumstances

Respectfully Submitted

By:_____

FRED SAMSON pro sc
1143 Yale
Houston, Texas 77008
(713) 869-2031

November 3, 2010.

CERTIFICATE OF GOOD FAITH

Fred Samson Petitioner pro se herein , do herby affirm and declare that this petition for rehearing is presented in good faith and not for purpose of delay

FRED SAMSON

November 3, 2010

CERTIFICATE OF SERVICES

I hereby certify that true and original of three copies of the forgoing instrument Petition for Rehearing was sent to opposite party counsel and pro se this day on November 3, 2010.

James Manley P.C
James Manley pro se
200 William Barnett
Cleveland, Texas 77327

Melissa Davis
Ware Jackson Lee & Chamber
2929 Allen Parkway
American Tower floor 42
Houston Texas 77019

FRED SAMSON

APPENDIX

RA-1

CONSTITUTIONAL AND STATUTORY PROVISIONS

US.CONSTITUTION

Article VI.§2:

This Constitution , and Law of the United States which shall be made in pursuance thereof , and all Treaties made or which shall be made, under the Authority of the United in every States shall be bounded thereby , and Thing in the Constitution or Laws of any States to the Contrary notwithstanding.

Article VI. § 3

The Senators and representative before mentioned and the Members of the several state Legislatures , and all executive and judicial officers , both of the United States and of the several states , shall be bounded by Oath Or Affirmation, to support this Constitution ; .....

FEDERAL STATUES

28 U.S. C. : 453

Each justice or judge of the United States shall take the Following oath or affirmation before performing the duties of his office :" I,__-do solemnly swear (or affirm) that I will administer justice without respect to person , and do equal right to the poor and to the rich, and that I will faithfully and impartially discharged and perform all the duties incumbent upon me as _____under the Constitution and laws of the United States . So help me God . "

28 U.S. C. § 2106

The Supreme Court or any other court of Appellate jurisdiction may affirm, modify vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the' bcause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be as may be just under the circumstances.

SUPREME COURT of the UNITED STATES
OFFICE OF THE CLERK
Washington , DC 200543 - 0001

William K. Suter
Clerk of the Court
(202) 479 -3011

October 12, 2010
Mr. Fred Samson
v. James Manley et, al

No. 10-183

Dear Mr. Samson

The Court today entered the following order in the above –entitled case .
The petition for a written of certiorari is denied

Sincerely
/s

William K. Suter , Clerk